IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.3779 of 2007

Date of Decision: October 9, 2007

Sukhchain Singh .....Petitioner

Versus

Joginder Singh .....Respondent

CORAM: HON'BLE MR. JUSTICE S. D. ANAND

PRESENT: Mr.Vikas Behl, Advocate for the petitioner.

Mr.Satinder Sharma, Advocate for the respondent.

S. D. ANAND, J.

1. The present revision petition, filed by defendant-petitioner, is directed against order dated 2.4.2007 vide which the learned Trial Court declined a plea filed by the defendant-petitioner for amendment of the written statement.

2. In order to assail the impugned order, learned counsel for the petitioner argues that the defendant-petitioner has already made an averment in the course of the written statement that the impugned documents, upon which the signatures of the petitioner had been obtained in blank condition, had been

converted into the impugned receipt. The proposed amendment would only enable the defendant-petitioner to aver that the documents, upon which his signatures had been obtained in blank condition, had also been converted into the impugned agreement. The argument proceeds that the proposed amendment shall enable the petitioner to aver that the documents, upon which the signatures of the defendant-petitioner had been obtained in blank condition, had been converted into the impugned receipt and agreement, which are the very basis of the relief sought by the plaintiff-respondent. It is also the plea that an issue in respect of the controversy touching the receipt has already been framed and the relevant suggestion had also been given to the witness examined by the plaintiff-respondent. On that premise, it is argued that no prejudice would be caused to the plaintiff-respondent by the allowance of the application. In support of the advocated view, reliance was placed upon **Panchdeo Narain Srivastava Vs. Km.Jyoti Sahay and another,** AIR 1983 SC 462, **Satguru Sri Jajit Singh Ji Vs. Gurjeet Singh alias Harcharan Singh and others**, 2006(2) RCR (Civil) 71 and **Rajesh Kumar Aggarwal & Ors. Vs. K.K.Modi & Ors**., 2006(2) RCR (Civil) 577.

3. The plea was resisted by the learned counsel for the plaintiff-respondent who argued that the proposed amendment is thoroughly uncalled for, particularly when the plea in the context, had been raised after the conclusion of evidence of the parties. In that context, particular attention of this Court was invited to the fact that the evidence of the defendant-petitioner had initially been closed under the orders of the Court and it was only in revision that this Court had allowed one more opportunity to the petitioner

subject to the payment of Rs.1,000/- as costs. It was thereafter only that the application for the proposed amendment was filed by the defendant-petitioner.

4. In support of the argument that the plea deserves outright dis-allowance, reliance was placed upon **Heeralal Vs. Kalyan Mal & Ors**., 1998 (1) CCC 1(SC) and **Baldev Singh and others Vs. Manohar Singh and another,** 2006(6) SCC 498 .

5. It requires notice at the very outset that the suit was instituted on 24.10.2002. That institution was during the post-CPC amendment period. Issues were framed on 11.3.2004. The evidence of the plaintiff-respondent was concluded on 27.9.2005. The defendant-petitioner availed of five opportunities including a last opportunity which he did not avail of and his evidence was ordered to be closed by the Court vide order dated 11.9.2006. It was in revision only that this Court allowed one additional opportunity to the defendant-petitioner to adduce evidence subject to payment of Rs.1,000/- as cost (vide order dated 31.10.2006). It was thereafter that the defendant-petitioner filed the plea for the proposed amendment.

6. By the very nature of things, the plea forming the subject of proposed amendment was to the notice of defendant-petitioner from the very beginning. The proposed premise is not something the defendant-petitioner was not cognizant of at the time of filing of pleadings. In that view of things, the moving of the impugned application would seem to be almost barred in the light of the amendment of the CPC. It requires notice in the context that the suit itself had been instituted on 24.10.2002 i.e. after the coming into force of relevant amendment and issues in the matter were framed on 11.3.2004.

6. The reliance placed by the learned counsel for the petitioner upon **Satguru Sri Jajit Singh Ji's** case (supra) is mis-conceived. The only amendment sought by the plaintiff-respondent in that case was in the plaint and the addition of only khasra numbers was sought. That was a suit for possession. The proposed amendment was denied only on account of delay. This Court noticed that the proposed amendment deserved to be allowed as the plaintiff-respondent had already made an averment that the land in suit had been demarcated by boundaries. The only plea to be introduced was that the property under reference was part of a particular khasra number which had been inadvertently omitted.

7. **Rajesh Kumar Aggarwal's** case (supra) is also not attracted to the present case. All that was held by the Apex Court in the said case is that if a cause of action arose during the pendency of the suit and the proposed amendment did not change the basic structure of the suit, the amendment in the pleading should be allowed.

8. The line of argument, advocated on behalf of the plaintiff-respondent, is in line with the judgments rendered in **Heeralal and Baldev Singh's** cases (supra).

9. The present petition is, accordingly, held to be completely bereft of merit and shall stand dismissed. There shall be no order as to the costs of the cause in the facts and circumstances of the case.

(S. D. ANAND)
JUDGE

October 9, 2007
SRM